rights." Thus, any of the numerous infringers against whom Colgate obtained decrees was free to appeal to this court, but none did so. The United States did appeal from the decree of dismissal but this appeal was dismissed, 127 U. S. 792.

3. *Question of Public Interest Involved.*

A question of public interest is involved, because it is always to the public interest that the United States should pay its just obligations, that an act of Congress providing for the examination and recognition of such obligations should have full force and effect, and that the validity and construction of patent rights by the courts of the United States should be uniform.

The judgment of the Court of Claims is in conflict with the principle of *stare decisis* in failing to follow the decisions of the Circuit Court of the United States for the Southern District of New York in upholding the patent in suits by Colgate against various corporate infringers. It is also in conflict with the principle of *res judicata* in failing to give full force and effect to the decisions of said United States Circuit Court in the suit against Colgate to cancel the patent, which suit was on demurrer thereto dismissed.

This was a suit commenced by the United States against Colgate, to cancel the patent on the ground that there was no novelty in the invention and that the invention was publicly known long prior to the issuance of the patent. Thus the suit to cancel the patent by the United States was based upon the identical ground upon which the Court of Claims in the present case held that the patent was invalid. A general demurrer was sustained to the bill with leave to the United States to amend within twenty days. The United States did not choose to amend and a decree was entered, dismissing the bill.

This was a decree on the merits, establishing the validity of the patent. *Durant* v. *Essex*, 7 Wall. 107; *Lyon* v. *Perrin*, 125 U. S. 698; *Hickey* v. *Johnson*, 9 Fed. (2d) 498. From this decree the United States took an appeal to the Supreme Court of the United States. This appeal was dismissed on motion of the Solicitor General, 127 U. S. 792.

The validity of the patent, as between the United States and Colgate, was, therefore, *res judicata* and not open to further question by the United States. The Court of Claims was thus in error in holding that the United States could again inquire into the validity of the patent.

4. *Decision in Conflict with Declared Law.*

The decision of the Court of Claims holding that the letter withdrawing the application for patent and requesting the Commissioner of Patents to refund the fee of $20 invalidates the patent is a departure from settled principles of the law of patents as laid down by this court.

In *Godfrey* v. *Eames*, 1 Wallace, 317, 325:

"In our judgment, if a party choose to withdraw his application for a patent and pay the forfeit, intending at the time of such withdrawal to file a new petition, and he accordingly do so, the two petitions are to be considered as parts of the same transaction, and both as constituting one continuous application within the meaning of the law."

The above decision was thus construed and applied in *Smith* v. *Goodyear Dental Vulcanite Co.*, 93 U. S. 486, 500:

"It is impossible, in view of these facts, to regard the effort to obtain a new patent in 1864 as a new and independent application, disconnected from the application made in 1855. It was but one stage in a continuous effort. In *Godfrey* v. *Eames*, 1 Wall. 317, the first application was actually withdrawn, and a new petition was presented at the time of the withdrawal, with a different description of the invention; but as the thing patented under the second might have been engrafted as an amendment of the first, it was ruled that all the proceedings constituted one application."

The same principle was reaffirmed as late as 1927 in *Overland Motor Co.* v. *Packard Motor Co.*, 274 U. S. 417, 421, 422, opinion by the present Chief Justice:

"As the Patent Office by granting the patent must be held to have waived any objection to the application on the ground that the claim allowed had been rejected before by that Office,

there is no reason why the appellees below should not be allowed to avail themselves of the waiver. We answer the first question in the negative.

"Second. The second question was as follows:

"'In the absence of any other excuse for lapse of time between Patent Office actions and responses thereto, than that the applicant was exercising a statutory right (R. S. Sec. 4894 as amended setting limit of one year for response), may the bill of complaint be dismissed for want of equity because of long pendency in the Patent Office?'

"We think that under the decision of this court in *United States* v. *American Bell Telephone Company*, 167 U. S. 224, and *Chapman* v. *Wintroath*, 252 U. S. 126, this question must also be answered in the negative."

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